APPENDIX

IN THE SUPREME COURT OF FLORIDA

NO.

DADE COUNTY, etc., et al.,

Petitioners,

vs.

MARINE EXHIBITION CORP.,
a Florida corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioners, the Dade County taxing authorities, petition for a writ of certiorari and state:

1. Petitioners seek to have reviewed a decision of the Third District Court of Appeal dated June 25, 1974, and filed in the records of said Court on that same day, in Minute Book 55, page 250 (T. 1-2).[1]

2. This petition is presented under and pursuant to Art. V, Section 3(b)3 *Fla. Const.* of 1968 (as ratified March 14, 1972, effective January 1, 1973) and Rule 4.5c(6) Florida Appellate Rules.

[1]A copy of the decision petitioners seek to have reviewed is attached hereto as Exhibit A.

3. This petition is accompanied by a transcript of the record of the proceedings, including the decision petitioner seeks to have reviewed and a supporting brief.

4. The following are the facts of the case:

(a) Marine Exhibition Corp., a private corporation for profit, leases county-owned land and operates The Miami Seaquarium thereon as a tourist attraction. (T. 1)

(b) For 1972, the leasehold interest comprising the Seaquarium was taxed. (T. 1)

(c) The Seaquarium filed suit seeking exemption. (T. 1)

(d) By way of affirmative defense, the taxing authorities averred that the exemption sought by the Seaquarium would result in preferential tax treatment in violation of the equal protection clause of the 14th Amendment to the United States Constitution. (T. 3)

(e) In opposition to a motion for summary judgment, the assessor testified (by affidavit):

i) That other private tourist attractions located in Dade County such as: The Miami Serpentarium, The Monkey Jungle, The Orchid Jungle, and The

Parrot Jungle; which made the same use of their property as the Seaquarium made of its property were taxed; and

ii) That over 23% of the total value of all property located in Dade County was exempted from taxation (T. 4)

(f) The trial court granted summary final judgment, declaring the leasehold interest comprising the Seaquarium to be exempt from taxation. (T. 1)

5. On the foregoing facts, the court was presented with the following point of law:

> Can the Seaquarium be exempted from ad valorem taxation on the basis of the use it makes of its property, while all other private tourist attractions which put their property to the same use as the Seaquarium are taxed?

On this point of law, the Third District Court of Appeal held the Seaquarium exempt from taxation.

6. The same point of law was involved in Juarrero v. McNayr, 157 So.2d 79 (Fla. 1953).[2] In that case, Cuban refugees who owned their own home and resided in Florida under temporary visas sought homestead exemption. They contended that denial of homestead exemption deprived them of equal protection of the laws in contravention of the 14th Amendment to the United States Constitution. This court held that there was no denial of equal protec-

[2]A copy of this decision is attached hereto as Exhibit B.

tion when every other member within a reasonable classification to which Juarrero belonged was treated in the same manner.

7. The same point of law was also involved in Shevin v. Kahn, 273 So.2d 72 (Fla. 1973).[3] There, a widower had applied for and was denied the $500 widows exemption. This court held that there was no denial of equal protection as the basis of the classification for exemption was reasonable.

8. The decision of the Third District Court of Appeal which petitioners seek to have reviewed is in direct conflict with the above-mentioned cases. Because of the reasons and authorities set forth in petitioners' brief, it is believed that the decision hereby sought to be reviewed is erroneous and that the above-mentioned decisions are correct and should be approved by this court as the controlling law for the State of Florida.

WHEREFORE, petitioners request this court to grant a writ of certiorari and enter its order quashing the decision hereby sought to be reviewed, approving the above-mentioned decisions as the correct law, and granting such other and further relief as shall seem right and proper to the Court.

STUART SIMON
County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

By: /s/ R. A. Cuevas, Jr.
R. A. Cuevas, Jr.
Assistant County Attorney

[3]A copy of this decision is attached hereto as Exhibit C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for a Writ of Certiorari to the District Court of Appeal Third District, was mailed this ____ day of July, 1974, to Mershon, Sawyer, Johnston, Dunwody and Cole, 1600 First National Bank Building, Miami, Florida.

/s/ R. A. Cuevas, Jr.
Assistant County Attorney

EXHIBIT A

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1974

CASE NO. 73-995

DADE COUNTY, etc., et al.,
Appellants,

vs.

MARINE EXHIBITION CORP., a Florida corporation,
Appellee.

Opinion filed June 25, 1974.

An Appeal from the Circuit Court for Dade County, Harvie S. DuVal, Judge.

Stuart Simon, County Attorney, and R.A. Cuevas, Jr., Assistant County Attorney, for appellants.

Mershon, Sawyer, Johnston, Dunwody & Cole and Woodrow M. Melvin, Jr., for appellee.

Frank A. Howard, Jr., and Thomas G. Spicer, for the School Board of Dade County, Florida, Amicus Curiae.

Before PEARSON, HENDRY and HAVERFIELD, JJ.

PER CURIAM.

The appellant is Dade County, Florida. It appeals a summary final judgment declaring that the leasehold interest of the Marine Exhibition Corporation is not subject to taxation. The Marine Exhibition Corporation is the operator of the Miami Seaquarium. The corporation obtained the property in 1954 upon a lease from Dade County after Dade County had secured the land from the State. The deed provided that the County was to use the land for a public purpose. Pursuant to this provision, the County leased the land for a marine exhibit. The County agreed that the leasehold interest would not be taxed unless the laws of the State required it to be, and no taxes were levied until 1969. The tax here concerned is for the year 1972. In 1969, the Seaquarium property was exempted by the Board of Equilization and has been exempted as to the 1970 and 1971 taxes by order of the circuit court.

The appellant maintains that a genuine issue of material fact exists as to whether or not the property was on January 1, 1972 used for a public purpose. The only factual matter relied upon to create this issue is the affidavit of the then acting tax assessor of Dade County, as follows:

* * *

> "5. The predominant use made by the Marine Exhibition Corporation of the subject leasehold in 1972 was for a private, profit-making venture. More specifically, the vast majority of those members of the public who visited the Miami Seaquarium paid a substantial admission fee, the predominant portion of which inured to the private benefit of the Marine Exhibition Corporation. In this sense, the operation of the subject leasehold comprising the Miami Seaquarium is

no different than other privately owned tourist attractions located in Dade County, Florida, which were not tax exempt for 1972 as: the Miami Serpentarium, the Monkey Jungle, the Orchid Jungle, the Parrot Jungle."

• • •

The affidavit is insufficient to raise an issue. The fundamental questions presented by this case have been answered by the Supreme Court of Florida in Dade County v. Pan American World Airways, Fla. 1973, 275 So.2d 505.

Affirmed.

EXHIBIT B

Francisco P. JUARRERO, and Alicia V. Juarrero, his wife, as taxpayers of Dade County, Florida, and all other taxpayers similarly situated, Appellants,

v.

Irving G. McNAYR, as County Manager of Dade County, Florida, charged with the duties of the Tax Assessor of Dade County, Florida, and Sam L. Elcook, as the Acting Tax Assessor of Dade County, Florida, and Ray E. Green, as Comptroller of the State of Florida, Appellees.

No. 32589.

Supreme Court of Florida.

Oct. 23, 1963.

Suit by taxpayers to compel allowance of homestead tax exemption under the State Constitution, F.S.A. Const.

art. 10, §7, on property occupied by plaintiffs as a residence. From a final decree of the Circuit Court for Dade County, George E. Schulz, J., dismissing the complaint with prejudice, plaintiffs appealed. The Supreme Court, Roberts, J., held that alien political refugees residing in the United States by warrant of temporary non-immigrant visas could not rightfully and in good faith make residence purchased in Florida their permanent home within constitutional provision for homestead tax exemption.

Affirmed.

1. Courts—216

Under constitutional provision authorizing appeal directly to Supreme Court from judgment or decree construing a controlling constitutional provision, Supreme Court had jurisdiction of direct appeal from final decree determining that plaintiffs were not entitled under Constitution to homestead tax exemption on property occupied by them as residence. F.S.A.Const. art. 5, §4(2); art. 10, §7.

2. Taxation—219

Citizenship is not a prerequisite for claiming constitutional homestead tax exemption. F.S.A. Const. art. 10, §7.

3. Taxation—219

Alien political refugees residing in United States for indefinite stay by warrant of temporary non-immigrant visas could not rightfully and in good faith make residence purchased by them in Florida their "permanent home"

within constitutional provision for homestead tax exemption F.S.A. §192.14; F.S.A.Const. art. 10, §7.

See publication Words and Phrases for other judicial constructions and definitions.

4. Constitutional Law—87,229(2)

Denial of homestead tax exemption to alien political refugees on ground that because they had only temporary non-immigrant visas they could not rightfully and in good faith make their permanent home in Florida did not deprive them of property rights in violation of State Constitution or deny to them equal protection of the laws in violation of Fourteenth Amendment to federal Constitution. F.S.A. Const. art. 10, §7; U.S.C.A Const. Amend. 14.

Madsen & Briggs and Stewart D. Allen, Miami, for appellants.

Darrey A. Davis and St. Julien P. Rosemond, Miami, for appellees.

ROBERTS, Justice.

[1] Before us for review is a final decree of the Circuit Court in and for Dade County entered in a suit wherein the appellants sought to compel the allowance of a homestead exemption under Section 7, Article X, of the Constitution of Florida, F.S.A., such property being occupied by them as a residence. The Chancellor denied the relief, holding that appellants, under the facts alleged, are

not entitled to the homestead exemption sought. Jurisdiction of the appeal derives from Section 4(2) of revised Article V, Florida Constitution, authorizing an appeal directly to this court from final judgments or decrees construing a controlling provision of the Florida Constitution.

The material facts are simple and unchallenged. Appellants purchased a home Coral Gables, Florida, in November, 1960, after coming to this country from Cuba by dint of necessity and seeking refuge from the politically hostile government of their homeland. They are the holders of non-immigrant visas valid for unlimited applications for admission into the United States until March, 1963, which visas were issued and granted under the auspices of the American Embassy in Havana, Cuba. On or about December, 1960, appellants were granted permission by the Immigration Authorities to stay indefinitely in this country and to depart voluntarily. They do not have permanent visas and, in lay parlance, may be classified as "Cuban refugees." The visas are not authority under existing circumstances for them to remain here permanently, that is to say, beyond their immediate need for political asylum. The uncertainty of this need requires an indefinite stay although the visas are temporary in character. In this posture the controlling question is: Can an alien, temporarily absent from his homeland because of political persecution, and residing in this country for an indefinite stay by warrant of a temporary visa, make Florida in good faith his permanent home?

The Chancellor decided this question in the negative after making certain findings of fact and conclusions of law. From the decree we quote the following excerpts:

"* * * plaintiffs are temporary residents of Dade County, Florida, being non-resident aliens classified as Cuban refugees and, therefore, cannot 'rightfully' or in 'good faith' make Dade County their 'permanent home' in view of the fact that the word 'temporary' is obviously an antonym of the word 'permanent', and that the words 'good faith' purport more than honesty of endeavor or honesty of purpose and include the ability to do that which the Constitution of the State of Florida, Article X, Section 7, requires to be done."

Section 7, Article X of the Constitution of Florida provides:

"Every person who has the legal title or beneficial title in equity to real property in this State and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessment for special benefits, up to the assessed valuation of Five Thousand Dollars on the said home and contiguous real property, as defined in Article 10, Section 1, of the Constitution, for the year 1939 and thereafter. Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon, as their respective interests shall appear, but no such exemption or more than Five Thousand Dollars shall be allowed to any one person or on any one dwelling house, nor shall the

amount of the exemption allowed any person exceed the proportionate assessed valuation based on the interest owned by such person. The Legislature may prescribe appropriate and reasonable laws regulating the manner of establishing the right to said exemption. Added general election 1934, as amended general election 1938.

Section 192.14, Florida Statutes, F.S.A., provides:

"The words 'resident,' 'residence,' 'permanent residence,' 'permanent home' and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside."

[2, 3] Citizenship is not a prerequisite for claiming homestead exemption. See Smith, Tax Assessor, et al. v. Voight, 158 Fla. 366, 28 So.2d 426. Appellants have made every requirement for the exemption claimed within their power, and thus the question arises as a matter of law as to whether or not, under the circumstances mentioned, they possess the legal power to rightfully and in good faith make the subject property their "permanent home." We must adopt the view of the Chancellor that they cannot legally intend to do that which by law and the temporary nature of their visas they are prohibited from doing.

It is true that a resident of another state in this country may abandon residence in that state, come to Florida, purchase a home, reside in it, and declare it to be his permanent residence and become entitled to the homestead exemption provided by Section 7, Article X of our Constitution. Such person must make such declaration "rightfully" and in "good faith." This might also be true in the case of one from another country, who is in this country with a permanent visa. Such persons have the freedom and right with certainty to make and declare a bona fide intention of permanent residence in the home owned and located in this state. This is not so, however, in the case of a citizen and former resident of a foreign country who is here under the authority of nothing more than a temporary visa, because such person has no assurance that he can continue to reside in good faith for any fixed period of time in this country. Consequently, we hold he cannot "legally," "rightfully" or in "good faith" make or declare an intention which he has no assurance he can fulfill or carry out because of the temporary nature of the visa. In other words, he does not have the legal ability to determine for himself his future status and does not have the ability legally to convert a temporary residence into a permanent home.

[4] We have not overlooked appellants' contention that the denial of homestead exemptio.. to these alien refugees would deprive them of their property rights under the Constitution of the State of Florida and of their rights under the Equal Protection clause of the 14th Amendment to the Constitution of the United States. One cannot complain that he has been denied due process of equal protection of every other person within a reasonable classifica-

tion to which he belongs is treated in the same manner. These appellants constitute members of a class of Cuban refugees temporarily residing in the State of Florida under and by virtue of temporary visas, and this applies equally to other members of the same class. The decree of the Chancellor in which he dismissed the complaint with prejudice is without error and is accordingly,

Affirmed.

TERRELL, Acting C.J., and THOMAS, THORNAL, O'CONNELL, CALDWELL and HOBSON (Ret.), JJ., concur.

Robert L. SHEVIN et al., Appellants,
v.

Mel KAHN, etc., Appellee.

No. 42371.

Supreme Court of Florida.

Feb. 7, 1973.

Declaratory judgment proceeding attacking validity of tax exemption statute. The Circuit Court, Dade County, Thomas A. Testa, J., held the statute invalid and appeal was taken. The Supreme Court, McCain, J., held that Florida statute giving widows $500 exemption from taxation not violate equal protection and was valid.

Reversed.

1. Taxation —219

Term "widow" as used in statute granting widows a tax exemption could not be judicially defined to include a man who has lost his wife where legislative intent limited application of term only to woman who lost her husband by death. F.S.A. § 196.191(7).

2. Constitutional Law —229(2)
Taxation —194

Florida statute giving widows $500 exemption from taxation did not violate equal protection and was valid. F.S.A. § 196.191(7); F.S.A.Const. art. 1, § 2; U.S. C.A. Const. Amend. 14.

Robert L. Shevin, Atty. Gen., Barry Scott Richard, Deputy Atty. Gen. and Winifred L. Wentworth, Asst. Atty. Gen., for appellant.

Bill Hoppe, Miami, for appellee.

McCAIN, Justice.

Appellants appeal from a final judgment of the Circuit Court for Dade County, Florida, holding Fla.Stat. § 196.191(7)[1] invalid as a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution and Art. I, § 2, Declaration of Rights, Florida Constitution, 1968, F.S.A. We have jurisdiction pursuant to Fla. Const. Article V, §3(b)(1).

Appellee, Kahn, filed his complaint for declaratory relief as a class action pursuant to Rule 1.220, F.R.C.P., 30 F.S.A., and Fla. Stat. § 86.011, F.S.A., alleging denial of his application for a $500 tax exemption under Fla. Stat. § 196.191(7), F.S.A., and asserting that as a widower he and others similarly situated were deprived of equal protection and due process by the limitation of the exemption to "widows".

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[1]The various statutes relating to ad valorem taxation and exemptions therefrom were extensively revised by Chapter 71-133, Laws of Florida, which took effect on December 31, 1971. Inter alia Fla. Stat. § 196.191(7), F.S.A., was repealed as such and its substance incorporated in § 196.202, F.S.A., which provides:

> "Property of widows, blind persons, and persons totally and permanently disabled — Property to the value of five hundred dollars ($500) of every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation.

In his final judgment, the trial judge held:

> "The Florida Constitution, Article VII, Sec. 3(b) 1968, exempts every widow from taxation in the amount of $500.00 without any reference to 'widowers', [sic] and this Court is powerless to expand the meaning of 'widow' to include both women and men, it is therefore,
>
> "ORDERED AND ADJUDGED
>
> "1. That Florida Statute Sec. 196-191(7) [, F.S.A.,] applies to the feminine gender and is therefore discriminatory and arbitrary and is unconstitutional and in violation of the Equal Protection Clause of the Constitution of the United States and the Declaration of Rights, Article I, § 2 of the Florida Constitution, and Florida Statute 196.191(7) [, F.S.A.,] is inoperative and is hereby stricken."

[1] We agree that the term "widow" may not be judicially redefined to include a man who has lost his wife since the legislative intent obviously limits the application of the term only to a woman who has lost her husband by death. This definition is in conformance with the unvarying legislative and judicial use of the term in other areas.[2]

Appellee stresses that inclusion or exclusion from classification under this statute is determined by the sex

[2]See City of Jacksonville Beach v. State, 151 So.2d 430 (Fla.1963); Wilson v. Fridenburg, 19 Fla. 461 (1882); In re Estate of Yohn, 229 So.2d 612 (Fla.App. 1st, 1969); In re Beacher's Estate, 177 So.2d 838 (Fla.App.3rd, 1965).

of the individual involved. While this fact is of significance, it is not enough to declare the statute unconstitutional as a violation of equal protection of the law. Both the Florida and federal courts have upheld classifications determined by sex in other areas.[3]

All that is required to uphold the classification of widow or widower contained in the statute in question is that it be shown that it "rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation."[4] We cannot agree with the assertion that the classification of "widow" is not one which rests upon such a ground of difference.

It has been ably pointed out that the object of the legislation here in question is "to reduce to a limited extent the tax burden on widows who own property to the value of $500 and . . . thereby to 'reduce the disparity between the economic . . . capabilities of a man and a woman,' . . . ." As recognized in Gruenwald v. Gardner, supra, women workers as a class do not earn as much as men.[5]

[3]In Hoyt v. Florida, 368 U.S. 57, 82 S.Ct. 159, 7 L.Ed.2d 118 (1961), the United States Supreme Court unanimously affirmed the decision of this Court, Hoyt v. Florida, 119 So.2d 691 (Fla.1959), upholding a classification determined by sex for the purpose of according a privileged status to women in jury registration. In Gruenwald v. Gardner, 390 F.2d 591 (2d Cir. 1968), the United States Court of Appeals upheld the constitutionality of certain provisions of the Social Security Act which accorded women more favorable treatment than men in computing social security benefits.

[4]Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225 (1971).

[5]It is estimated that in 1970 the median annual earnings of all male workers with taxable earnings was $6,133 while only $2,734 for women. U. S. Dept. of H. E. W., Social Security Bull., Annual Statistical Supp., 1970, Table 35 at 59.

Certainly this has a "fair and substantial relation" to the ability of women property owners to pay taxes on property of even minimal value.

We recognize that steps have been and are continuing to be taken toward the elimination of legal barriers to equality of the sexes. Among the significant steps toward this end is the legislative provision for alimony and child support payments by women as well as men.[6] This provision, however, provides a means of taking into consideration the factual economic capability of each woman involved through judicial supervision and control.

Significantly, the provisions of the statute under review do not provide any means for similar consideration. Therefore, until the steps taken toward legal equality result in equality in fact, a finding of identity between the sexes at this time would rest on fiction and not fact.

[2] Accordingly, it is our judgment that Fla.Stat. §196.191(7), F.S.A., is a valid legislative enactment. Therefore, the final judgment of the Circuit Court must be and is hereby reversed.

It is so ordered.

CARLTON, C.J., ROBERTS, ERVIN, BOYD and DEKLE, JJ., and WILLIAMS, Circuit Judge, concur.

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[6]Fla.Stat. § 61.08, F.S.A. (1972).